

PRICE OKAMOTO HIMENO & LUM

WARREN PRICE III 1212
ROBERT A. MARKS 2163
707 Richards Street, Suite 728
Honolulu, Hawaii 96813
Phone: 808.538.1113
Fax: 808.533.0549
E-mail: ram@pohlhawaii.com

Attorneys for Defendants
KIAHUNA GOLF CLUB, LLC,
KG KAUAI DEVELOPMENT, LLC,
PUKALANI GOLF CLUB, LLC,
KG MAUI DEVELOPMENT, LLC,
MILILANI GOLF CLUB, LLC,
QK HOTEL, LLC, OR HOTEL, LLC,
AND KG HOLDINGS, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a
Japanese corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawai'i limited
liability company; KG HOLDINGS, LLC,
a Hawai'i limited liability company and
FRANKLIN K. MUKAI,

Defendants,

and

FRANKLIN K. MUKAI,

CV 04-00124 ACK-BMK

CONSOLIDATED CASES

EX PARTE MOTION FOR ORDER
TO SHOW CAUSE WHETHER TO
SEAL EXHIBITS 6, 7, 8, 10, 11 AND
12 TO MOTION TO DISMISS CV.
NOS. 04-00125 ACK-BMK, 04-00126
ACK-BMK AND 04-00128 ACK-
BMK FOR LACK OF SUBJECT
MATTER JURISDICTION;
DECLARATION OF ROBERT A.
MARKS; CERTIFICATE OF
SERVICE

Third-Party Plaintiff,

vs.

SPORTS SHINKO (USA) CO., LTD., a Delaware corporation; SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (MILILANI) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (KAUAI) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (PUKALANI) CO., LTD., a Hawai'i corporation; SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawai'i corporation; SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawai'i corporation; and OCEAN RESORT HOTEL CORPORATION, a Hawai'i corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawai'i corporation; and SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawai'i corporation,

Third-Party Defendants /
Counterclaimants,

vs.

QK HOTEL, LLC, a Hawai'i limited liability company; KG HOLDINGS, LLC, a Hawai'i limited liability company; and FRANKLIN K. MUKAI,

Third-Party Counterclaim
Defendants

SPORTS SHINKO (USA) CO., LTD., a
Delaware corporation,

Plaintiff,

vs.

PUKALANI GOLF CLUB, LLC, a
Hawai'i limited liability company; KG
MAUI DEVELOPMENT, LLC, a
Hawai'i limited liability company; KG
HOLDINGS, LLC, a Hawai'i limited
liability company; and FRANKLIN K.
MUKAI,

Defendants,

and

FRANKLIN K. MUKAI,

Third-Party Plaintiff,

vs.

SPORTS SHINKO CO., LTD., a
Japanese corporation; SPORTS SHINKO
(HAWAII) CO., LTD., a Hawai'i
corporation; SPORTS SHINKO
(MILILANI) CO., LTD., a Hawai'i
corporation; SPORTS SHINKO (KAUAI)
CO., LTD, a Hawai'i corporation;
SPORTS SHINKO (PUKALANI) CO.,
LTD., a Hawai'i corporation; SPORTS
SHINKO RESORT HOTEL

CV 04-00125 ACK-BMK

CORPORATION, a Hawai'i corporation;
SPORTS SHINKO (WAIKIKI)
CORPORATION, a Hawai'i corporation;
and OCEAN RESORT HOTEL
CORPORATION, a Hawai'i corporation,

Third-Party Defendants,

and

SPORTS SHINKO CO., LTD., a
Japanese corporation; SPORTS SHINKO
(HAWAII) CO., LTD., a Hawai'i
corporation; and SPORTS SHINKO
(PUKALANI) CO., LTD., a Hawai'i
corporation,

Third-Party Defendants /
Counterclaimants,

vs.

PUKALANI GOLF CLUB, LLC, a
Hawai'i limited liability company; KG
MAUI DEVELOPMENT, LLC, a
Hawai'i limited liability company; KG
HOLDINGS, LLC, a Hawai'i limited
liability company; and FRANKLIN K.
MUKAI,

Third-Party Counterclaim
Defendants.

SPORTS SHINKO (USA) CO., LTD.,
a Delaware corporation,

Plaintiff,

vs.

CV 04-00126 ACK-BMK

KIAHUNA GOLF CLUB, LLC, a
Hawai'i limited liability company; KG
KAUAI DEVELOPMENT, LLC, a
Hawai'i limited liability company;
PUKALANI GOLF CLUB, LLC, a
Hawai'i limited liability company; KG
MAUI DEVELOPMENT, LLC, a
Hawai'i limited liability company;
MILILANI GOLF CLUB, LLC, a
Hawai'i limited liability company; QK
HOTEL, LLC, a Hawai'i limited
liability company, OR HOTEL, LLC, a
Hawai'i limited liability company; KG
HOLDINGS, LLC, a Hawai'i limited
liability company; and FRANKLIN K.
MUKAI,

Defendants,

and

FRANKLIN K. MUKAI

Third-Party Plaintiff,

vs.

SPORTS SHINKO CO., LTD., a
Japanese corporation; SPORTS
SHINKO (HAWAII) CO., LTD., a
Hawai'i corporation; SPORTS
SHINKO (MILILANI) CO., LTD., a
Hawai'i corporation; SPORTS
SHINKO (KAUAI) CO., LTD., a
Hawai'i corporation; SPORTS
SHINKO (PUKALANI) CO., LTD., a
Hawai'i corporation, SPORTS
SHINKO RESORT HOTEL
CORPORATION, a Hawai'i

corporation; SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawai'i corporation; and OCEAN RESORT HOTEL CORPORATION, a Hawai'i corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation and SPORTS SHINKO (KAUAI) CO., LTD., a Hawai'i corporation,

Third-Party Defendants /
Counterclaimants,

vs.

KIAHUNA GOLF CLUB, LLC, a Hawaii limited liability company; KG KAUAI DEVELOPMENT, LLC, a Hawai'i limited liability company; PUKALANI GOLF CLUB, LLC, a Hawai'i limited liability company; KG MAUI DEVELOPMENT, LLC, a Hawai'i limited liability company; QK HOTEL, LLC, a Hawai'i limited liability company; OR HOTEL, LLC, a Hawai'i limited liability company; KG HOLDINGS, LLC, a Hawai'i limited liability company; and FRANKLIN K. MUKAI,

Third-Party Counterclaim
Defendants.

SPORTS SHINKO CO., LTD., a

CV 04-00127 ACK-BMK

Japanese corporation,

Plaintiff,

vs.

OR HOTEL, LLC, a Hawai'i limited liability company; KG HOLDINGS, LLC, a Hawai'i limited liability company; and FRANKLIN K. MUKAI,

Defendants,

and

FRANKLIN K. MUKAI

Third-Party Plaintiff,

vs.

SPORTS SHINKO (USA) CO., LTD., a Delaware corporation; SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (MILILANI) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (KAUAI) CO., LTD., a Hawai'i corporation; SPORTS SHINKO (PUKALANI) CO., LTD., a Hawai'i corporation; SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawai'i corporation; SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawai'i corporation; and OCEAN RESORT HOTEL CORPORATION, a Hawai'i corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO.,
LTD., a Hawai'i corporation; SPORTS
SHINKO RESORT HOTEL
CORPORATION, a Hawai'i
corporation; and SPORTS SHINKO
(WAIKIKI) CORPORATION, a
Hawai'i corporation,

Third-Party Defendants /
Counterclaimants,

vs.

OR HOTEL, LLC, a Hawai'i limited
liability company; KG HOLDINGS,
LLC, a Hawai'i limited liability
company; and FRANKLIN K.
MUKAI,

Third-Party Counterclaim
Defendants.

SPORTS SHINKO (USA) CO., LTD., a
Delaware corporation,

Plaintiff,

vs.

MILILANI GOLF CLUB, LLC, a
Hawai'i limited liability company; KG
HOLDINGS, LLC, a Hawai'i limited
liability company; and FRANKLIN K.
MUKAI,

CV 04-00128 ACK-BMK

Defendants,

and

FRANKLIN K. MUKAI,

Third-Party Plaintiff,

vs.

SPORTS SHINKO CO., LTD., a
Japanese corporation; SPORTS SHINKO
HAWAII) CO., LTD., a Hawai'i
corporation; SPORTS SHINKO
(MILILANI) CO., LTD., a Hawai'i
corporation; SPORTS SHINKO (KAUAI)
CO., LTD., a Hawai'i corporation;
SPORTS SHINKO (PUKALANI) CO.,
LTD., a Hawai'i corporation; SPORTS
SHINKO RESORT HOTEL
CORPORATION, a Hawai'i corporation;
SPORTS SHINKO (WAIKIKI)
CORPORATION, a Hawai'i corporation;
and OCEAN RESORT HOTEL
CORPORATION, a Hawai'i corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO.,
LTD., a Hawai'i corporation and
SPORTS SHINKO (MILILANI) CO.,
LTD., a Hawai'i corporation,

Third-Party Defendants /
Counterclaimants,

vs.

MILILANI GOLF CLUB, LLC, a
Hawai'i limited liability company; KG
HOLDINGS, LLC, a Hawai'i limited
liability company, and FRANKLIN K.
MUKAI,

Third-Party Counterclaim
Defendants.

EX PARTE MOTION FOR ORDER TO SHOW CAUSE WHETHER TO SEAL
EXHIBITS 6, 7, 8, 10, 11 AND 12 TO MOTION TO DISMISS CV. NOS. 04-
00125 ACK-BMK, 04-00126 ACK-BMK AND 04-00128 ACK-BMK FOR LACK
OF SUBJECT MATTER JURISDICTION

Defendants KG Holdings, LLC, QK Hotel, LLC, OR Hotel, LLC, Pukalani
Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, Kiahuna
Golf Club, LLC and KG Kauai Development, LLC (collectively, "KG"), by and
through their counsel, Price Okamoto Himeno & Lum, respectfully moves this
Honorable Court *ex parte* to issue an Order To Show Cause, directed to the SS
entities¹, to state why Exhibits 6, 7, 8, 10, 11 and 12 to the KG's Motion To
Dismiss CV. Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128
ACK-BMK For Lack Of Subject Matter Jurisdiction filed November 16, 2006 (the
"Exhibits" and the "Motion", respectively) should be filed under seal or redacted in

¹ "SS entities" refers to plaintiffs Sports Shinko Co., Ltd. and Sports Shinko
(USA) Co., Ltd., and third party defendants Sports Shinko (Hawaii) Co., Ltd.,
Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Kauai) Co., Ltd., Sports Shinko
(Pukalani) Co., Ltd., Sports Shinko Resort Hotel Corporation, Sports Shinko
(Waikiki) Corporation, and Ocean Resort Hotel Corporation.

a manner acceptable to the Court and the parties. The Exhibits were served upon the Chambers of the Court, without redaction, on November 16, 2006.

This Motion is made on the grounds that Exhibits 6, 7, 8, 10, 11 and 12 were designated “confidential” at the behest of some or all of the SS entities in the manner provided by the Stipulated Protective Order filed herein on January 25, 2005 (“SPO”). However, the confidential nature of the Exhibits pursuant to the criteria of Kamakana v. City and County of Honolulu, 447 F.3d 1172 (9th Cir. 2006) (“Kamakana”), which was decided after the Court approved the SPO, is not established.

KG has no stake in the outcome of this issue so long as certain address information found in the Exhibits is before the Court in its consideration of the Motion. KG is indifferent to whether the Exhibits are filed under seal. It is the burden of the SS entities to demonstrate that the documents it asserts are confidential can properly be filed under seal pursuant to the criteria of Kamakana.

As demonstrated in the attached declaration of counsel, KG has been diligent in trying to resolve this issue without judicial intervention, but the SS entities have not been responsive, thereby making this motion necessary.

WHEREFORE, KG asks the Court to enter an order requiring the SS entities to show cause why the Exhibits should be filed under seal or redacted in a manner suitable to the Court and the parties, or if they fail to timely show cause, to direct

that the Exhibits be filed in the public record. KG respectfully requests that SS be ordered to show cause in an expedited time frame such that the hearing on KG's Motion, set for February 12, 2007 at 9:30 a.m., may proceed as scheduled.

This Motion is supported by the Declaration of Robert A. Marks, and the record herein.

DATED: Honolulu, Hawaii, December 20, 2006.

/s/ Robert A. Marks
WARREN PRICE III
ROBERT A. MARKS

Attorneys for Defendants
KG Holdings, LLC, QK Hotel, LLC, OR
Hotel, LLC, Pukalani Golf Club, LLC, KG
Maui Development, LLC, Mililani Golf
Club, LLC, Kiahuna Golf Club, LLC and
KG Kauai Development, LLC